IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1949 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINODBHAIRAMBHAIVASAVA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR NK MAJMUDAR for Appellant(s) : 1,
MR RC KODEKAR APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 10/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This appeal under Section 374 of the Code of Criminal Procedure has been preferred by the present appellant-accused being aggrieved and dissatisfied by the judgment and order of conviction dated 13th July, 2005 passed by the learned Presiding Officer, Fast Track Court No.6, Surat in Sessions Case No.168 of 2004 whereby he was sentenced to undergo rigorous imprisonment for 10 years and fine of Rs.2000/-, in default, to undergo further 6 months S.I. for the charge under Section 376.

2. The case of the prosecution in short is that on 02.12.2003, when the victim went for natural call near canal, the appellant-accused came there and pushed the victim. When the victim fell down, the accused overpowered her and moved her peticot on upper portion of her body and raped her against her will. While she was trying to

resist, she received various injuries on her body. As he became more furious, he took one sugarcane piece and forcefully inserted the same into her vagina. As she shouted for help, people from surrounding area assembled there and, therefore, the appellant-accused ran away from the scene of offence. Though the villagers tried to remove sugarcane piece from her vagina, it could not be removed. Therefore, in the same condition, she was brought to the home and, thereafter, taken to Olpad Hospital. However, looking to the serious injuries, she was sent to Surat Hospital for further treatment where, she was operated for the injuries received in her vagina.

3. The prosecutrix, who was carrying four to five months of pregnancy, herself filed the complaint before Olpad Police Station being Olpad Police Station I-C.R.No.132/2003 for the offence punishable under Section 376 of the Indian Penal Code. Thereafter, investigation has been handed over to P.S.I.,

Olpad Police Station. During the course of investigation, the Police recorded statements of various witnesses, carried out panchnama of scene of offence and seized the clothes wore by the victim at the time of incident by way of panchnama. Thereafter, the accused was arrested and sent him to judicial custody. Police also seized the clothes of the appellant-accused by way of separate panchnama. Thereafter, the victim as well as the appellant-accused were sent for medical examination and obtained medical certificate. Thereafter, muddamal articles i.e. the clothes of the victim as well as of the appellant-accused were sent to FSL and on receiving the FSL Report, same is kept with the papers of investigation. At the end of investigation, chargesheet has been submitted into the Court of learned J.M.F.C, Olpad. As the offence against the appellant-accused was exclusively triable by the Court of Sessions, same has been committed to the Court of Sessions at Surat, where it was numbered as

Sessions Case No.168/2004 and transferred into the Court of learned Presiding Officer, Fast Track Court No.6, Surat. Learned Presiding Officer framed charge against the accused at Exh.7. The appellant-accused pleaded not guilty to the charge and prayed for trial.

4. To prove the guilt against the appellant-accused, the prosecution examined in all 14 witnesses and also placed reliance upon the various documentary evidence. At the end of trial, the Learned Presiding Officer, Fast Track Court No.6, Surat recorded further statement of the appellant-accused under Section 313 of the Criminal Procedure Code and after giving opportunities to the learned advocates appearing for the respective parties convicted the appellant-accused as aforesaid giving rise to file the present appeal.

5. Heard learned counsel for the appellant-accused, Mr.N.K. Majmudar and learned APP Mr.R.C. Kodekar for the respondent-State at

length.

6. Mr.Majmudar took us to the record available with this Court i.e. evidence of victim along with the complaint Exh.10, evidence of Prosecution Witness No.4 Gitaben Khushalbhai Rathod Exh.14, Prosecution Witness No.12 Manchhiben Dhusalbhai Rathod Exh.39 and Prosecution Witness No.13 Rajubhai Lalbha Exh.13 and argued that the Prosecution Witness No.4 viz., Gitaben Khushalbhai Rathod produced the clothes wore by the victim at the time of incident. Taking us through the evidence of Prosecution Witness No.7 Dr. Sandip Ganpatsinh Parmar Exh.20, Prosecution Witness No.8 Dr.Omkar Sitaram Chaudhary at Exh.22, Prosecution Witness No.6 Shivabhai Chhotubhai Rathod Exh.15, who is panch witness of the scene of offence and in whose presence, panchnama of place of offence has been drawn, the Prosecution Witness Nos.9, 10 and 11 and also the reasoned judgment delivered by the Court below, he argued that the say of the prosecution is not believable

and trustworthy. Drawing our attention through portion of evidence of the victim, he argued that as the distance between the canal and her house is about 1 Km., it is very difficult to believe the say of the prosecution that she went there for natural call. According to him, it was a case of consent. He further argued that it is a case of the defence from very beginning that both the appellant-accused and the victim were dealing in country liquor and there were enmity between them and, therefore, the appellant-accused has been falsely involved in the crime in question. He also argued that there are contradictions in the evidence of victim and, therefore, benefit of doubt should be given to the appellant-accused by quashing and setting aside the impugned judgment and order of conviction.

7. Mr.Kodekar, learned APP, also placed reliance upon the evidence referred to by the learned counsel for the appellant-accused and argued that the evidence of prosecutrix does not

require any corroboration. If the evidence of the prosecutrix is trustworthy then, the Court can rely upon the same and the accused can be convicted on that basis. Moreover, version of prosecutrix gets support from the evidence of other witnesses also. According to him, the medical evidence and FSL report are also in favour of the prosecution. Learned APP has placed reliance upon 2004(1) SCC 421, more particularly, head note 'C', which reads as under:-

> “Penal Code, 1860 – S.376 – Rape – Testimony of prosecutrix – Reliability – Held, can be acted upon without corroboration in material particulars – However, if the court of facts finds if it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony – Assurance, short of corroboration, as understood in the context of an accomplice would do.”

8. On going through the evidence of Prosecution Witness No.1 – prosecutrix at Exh.10 and her FIR at Exh.45 together with the discussion made at length by the Court below while delivering the judgment, it is a case of the prosecutrix from very beginning that when she

went for her natural call very near to the canal. At that time, the appellant-accused came there and pushed her, as a result of that, she fell down and, thereafter, the accused moved the peticot on the upper portion of the body of victim and committed her rape. It is also her case in the complaint as well as in her evidence before the Court that while trying to resist the same, she received various injuries by nail mark on her neck and also on her body including her breast. She has categorically deposed that after rape, the appellant-accused became so furious that he took one piece of sugarcane and forcefully entered into her vagina. Since, it was very painful and it could not be removed and, hence, in the same condition, she was taken to her house and from there, to the Hospital. It is also established that both the prosecutrix and the appellant-accused are residing in the same village and are known to each other. Moreover, the incident has been taken place

in broad day light and, therefore, question of misidentification does not arise.

9. It is also her case that at the time of incident, she was carrying pregnancy of 22 weeks and as a result of rape, she also received severe injuries in her vagina. She has proved the FIR Exh.45 filed by her at the earliest. Firstly, the victim has been taken to Olpad Hospital, where she has been examined by Dr.Omkar Sitaram Chaudhary, Prosecution Witness No.8 Exh.22. However, looking to the injuries, the prosecutrix has been referred to Surat Hospital for further treatment, where she has been examined by Dr.Sandip Ganpatsinh Parmar, Prosecution Witness No.7 Exh.20 and has been operated. Both the aforesaid doctors supported the say of the prosecutrix in toto and same have been discussed in detail by the Court below in paragraph nos.19, 20, 21 and 22 of the impugned judgment.

10. In paragraph no.19, Dr.Omkar has categorically deposed that on 02.12.2003, he

was discharging his duty as Medical Officer at Community Health Centre, Olpad and has examined the prosecutrix. On examination, he found that the prosecutrix was carrying a pregnancy of five months and there were five to six nail mark injuries in front of her neck and also upon her breast. It is also deposed that when she was brought into the hospital, blood was oozing out from her vagina. He also found fibre of sugarcane from her vagina and also injuries in her vagina. He has also taken samples of muddamal and categorically deposed that the injuries received by the proseuctrix in her vagina is possible by way of muddamal article sugarcane piece. He has also proved the injury certificate at Exh.25. He has also deposed that he has also examined the appellant-accused and also collected blood etc., for the purpose of sending it to the FSL.

11. Simultaneously, the Court below has also discussed the medical evidence of Dr.Sandip, Prosecution Witness No.7 on page no.16 at

paragraph no.22. He has categorically deposed that upon examining, he found that there was a score in her vagina of 3x1 cm. in size and as a result of that, even she was operated. Both the doctors have been cross-examined by the learned counsel for the appellant-accused at length, but nothing contrary has been come out.

12. Apart from the above, even FSL Report is also in favour of the prosecution. Same has been discussed by the Court below at length in paragraph no.38, wherein it has been proved that blood, which has been found on the sugarcane piece is of the group 'A' which is of the victim. Not only that, blood group of the appellant-accused as proved by the proseuction is of 'O' group and vaginal swab which has been examined by the FSL, was found to have group 'O'.

13. As discussed earlier, the prosecution also gets support from the oral evidence of Prosecution Witness No.12 viz., Manchhiben Dhusalbhai Rathod at Exh.39 and Prosecution

Witness No.13 viz., Rajubhai Lalbha at Exh.43 because these witnesses went to the place of offence on hearing the voice of victim. When they reached there, the appellant-accused ran away from the place of offence and, thereafter, they brought the prosecutrix at home in such a precarious condition. Not only that, her clothe, which has been seized and report of FSL to that effect also supports the say of the prosecution. Keeping in mind the judgment upon which reliance has been placed by the learned APP, more particularly, paragraph 'C', we are aware that if the oral evidence of the prosecutrix is trustworthy then, she does not require any corroboration. In this case, prosecutrix gets more support by way of Prosecution Witness Nos.12 and 13 and medical evidence as well as scientific report of FSL.

14. It is also not proved that the appellant-accused and victim were dealing in country made liquor and, therefore, arguments advanced to that effect that the appellant-

accused has been falsely involved is not believable. Moreover, keeping in mind the cogent evidence on record and looking to the nature of offence, injuries etc., it cannot be said that it is a case of consent.

15. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

> "....This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

16. In these circumstances, it is a fit case, wherein appeal is required to be dismissed at this stage.

17. The appeal is dismissed accordingly.

(R.P.DHOLAKIA, J.) (S.D.DAVE, J.)

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